REMARKS

Entry of the foregoing, reexamination and further and favorable reconsideration of the subject application in light of the following remarks. Entry of the Amendment, reexamination and further and favorable consideration of the subject application in light of the following remarks, pursuant to and consistent with 37 C.F.R. § 1.112, are thus respectfully requested. No new matter has been introduced by these amendments.

The Office Action Summary correctly indicates that Claims 1-13 are pending and under consideration in the application. Claims 1-13 stand rejected. Please cancel Claims 14-28 without prejudice. By the present amendment, Claims 1, 3, 5, 7, 9 and 10 are amended and Claims 11-13 have been withdrawn from consideration. Claims 1, 5, 9 and 10 have been amended to recite the specific SEQ ID NO elected. Claims 3, 7 and 9 have been amended to include the adjective "isolated" which can be found throughout the Specification, for example at page 12, line 14. Claims 9 and 10 have been amended to include "forty contiguous" for which support can be found throughout the Specification, for example at page 11, lines 22-23.

No prohibited new matter has been introduced by way of the above amendments. Applicants reserve the right to file a continuation or divisional application on any subject matter withdrawn or cancelled by way of this Amendment. Applicants respectfully request consideration of the subject application as amended herein.

1. The Claim Objections

The Examiner has objected to Claims 1-13, as reciting non-elected SEQ ID NO: 1-20622, 20624-22156, 22157-42778, and 42781-44266. Claims 1, 5, 9 and 10 have been amended to capture the elected nucleic acid sequence SEQ ID NO: 20623, which encodes SEQ ID NO: 42779. Accordingly, the Applicants respectfully request that the objection to Claims 1-13 be withdrawn.

2. The 35 U.S.C §101 Rejections

The Examiner has rejected Claims 3 and 7 under 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject matter. Specifically, the Examiner states, "The claims are directed to cells comprising an expression vector and include within the scope of the claims cloned human cells, which are non-statutory." In accordance with the Examiner's

suggestion, Applicants amend Claims 3 and 7 to include "isolated host cell." Accordingly, the Applicants respectfully request that the rejection to Claims 3 and 7 be withdrawn.

The Examiner has rejected Claim 9 under 35 U.S.C §101 because the claimed invention is directed to non-statutory subject matter. Specifically, the Examiner has indicated that Claim 9 is directed to a nucleic acid molecule which has the same characteristics and utility as nucleic acid molecules found naturally and consequently does not constitute a patentable subject matter. Applicants amend Claim 9 to include "an isolated probe." Accordingly, Applicants respectfully request that the rejection to Claim 9 be withdrawn.

3. The 35 U.S.C. §112, First Paragraph Rejections

The Examiner has rejected Claims 1-13 under 35 U.S.C. §112, first paragraph, as allegedly containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Specifically, the Examiner states, "...SEQ ID NO: 20623 lacks a start codon for translation. Without providing description of both a start and a stop codon, Applicants have only provided support for the specifically identified fragment."

Applicants respectfully traverse. A disclosure "is sufficient if the disclosure eaches those skilled in the art what the invention is and how to practice it." *In re Grimme, Keil and Schmitz,* 124 U.S.P.Q. 449, 502 (C.C.P.A. 1960). The Specification as filed provides ample support for the claims. Support for Claims 1-13 can be found throughout the Specification as filed, including on pages 28 – 29, lines 27 – 3. The Specification states that:

> Such start codons within the ORFs provided herein were identified by those of ordinary skill in the relevant art, and the resulting ORF and the encoded *A. fumigatus* polypeptide is within the scope of this invention. For example, within the ORFs a codon such as AUG or GUG (encoding methionine or valine) which is part of the initiation signal for protein synthesis were identified and the portion of an ORF to corresponding to a naturally-occurring *A. fumigatus* polypeptide was recognized.

Further support for Claims 1-13 can also be found in the Specification as filed on page 34, lines 9 – 21. The Specification states that:

> The nucleotide sequence corresponding to each ORF begins at the first nucleotide immediately following a stop codon and ends at the

> nucleotide immediately preceding the next downstream stop codon in the same reading frame. It will be recognized by one skilled in the art that the natural translation initiation sites will correspond to ATG, GTG, or TTG codons located within the ORFs. The natural initiation sites depend not only on the sequence of a start codon but also on the context of the DNA sequence adjacent to the start codon. Usually, a recognizable ribosome binding site is found within 20 nucleotides upstream from the initiation codon. In some cases where genes are translationally coupled and coordinately expressed together in "operons", ribosome binding sites are not present, but the initiation codon of a downstream gene may occur very close to, or overlap, the stop codon of the an upstream gene in the same operon. The correct start codons can be generally identified without undue experimentation because only a few codons need be tested. It is recognized that the translational machinery in bacteria initiates all polypeptide chains with the amino acid methionine, regardless of the sequence of the start codon.

Thus, Applicants assert that the present disclosure reasonably conveys to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Specifically, the correct start codons or initiation site corresponds to ATG, GTG or TTG, which one of ordinary skill in the art could easily identify. Accordingly, Applicants request reconsideration and withdrawal of the present rejection.

The Examiner has also rejected Claims 11-13 under 35 U.S.C. §112, first paragraph, as allegedly failing to comply with the enablement requirement. Specifically, the Examiner states that Claims 11-13 "contain subject matter which was not described in the Specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention." Although Applicants do not agree with such rejection, to expedite prosecution, Applicants withdraw Claims 11-13 from consideration and reserve the right to pursue the subject matter of these claims in a divisional and/or continuation application.

4. The 35 U.S.C §102(b) Rejection

The Examiner has rejected Claims 9-10 under 35 U.S.C. §102(b), as allegedly being anticipated by Longo, *et al.* (US Patent Number 5,312,746). Specifically, the Examiner states that Longo *et al.* discloses random octamer primers using the BioPrime DNA Labeling System and that the nucleic acid fragments disclosed by Longo *et al.* allegedly contain virtually every possible combination of eight consecutive nucleotides.

It is noted that the Examiner has not provided a sequence alignment or a search report containing such alignment. To expedite prosecution, however, Applicants have amended Claims 9-10 to recite "forty" contiguous nucleotides to obviate such rejection. Applicants respectfully request reconsideration of amended Claims 9-10.

CONCLUSION

In view of the amendments and remarks, it is believed that all claims are in condition for allowance, and it is respectfully requested that the application be passed to issue. If the Examiner feels that a telephone call would expedite the prosecution of this case, the Examiner is invited to call the undersigned at (781) 398-2548.

Respectfully submitted,

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